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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,125	06/26/2003	Melvin S. Mogil	024643-00015	3648
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ARENT FOX LLP				
1050 CONNECTICUT AVENUE, N.W.				
SUITE 400				
WASHINGTON, DC 20036				
EXAMINER				
MORGAN JR, JACK HOSMER				
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE		DELIVERY MODE		
10/07/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
IPMatters@arentfox.com  
Patent\_Mail@arentfox.com

**Office Action Summary****Application No.**

10/606,125

**Applicant(s)**

MOGIL, MELVIN S.

**Examiner**

JACK H. MORGAN JR

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/26/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 1, 2009 has been entered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first portion not having a releasable securement (as set forth in claims 1 and 16) must be shown or the feature(s) canceled from the claim(s). Examiner notes that the figures clearly show (while not labeled) releasable securements for the first portion (see for example figure 8a the hook and loop material shown on the inside of 52, as well as the tab and loop at the bottom of the portion (on either side of number 66). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 16 set forth that the first portion does not have a releasable securement. There is no mention in the text of the specification regarding a lack of a securement on the first portion. Moreover (as noted

above), the figures clearly show such a securement on the first portion. For this reason, a lack of a securement is new matter. For the purpose of examination, it was taken that the securement, if present on the first portion, was not "for maintaining said second portion in said first position".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12, 13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (US 6,234,677) in view of Preston (US 5,501,338). Mogil discloses a soft sided insulated container (Fig 19) having a first portion (504) and a second portion (506) defining first and second enclosed spaces respectively, the second portion being movable between a first folded position (See Fig 20) and a second unfolded position (See Fig 19), the second portion having at least one releasable securement (534) for maintaining it in the first position, the container having a first closure member to close the first enclosed space, and a second closure member to control access to the second enclosed space (note zippers), the first and second portions being insulated from each other to permit different environmental conditions to be maintained in the two enclosed spaces, the container further having a third portion mounted thereto defining a third enclosed space (526) wherein an entertainment device

is mounted in the third position (the pen in Figure 15) wherein the assembly has an access port (opening to third portion) capable of accommodating an electrical connection to the entertainment device.

Mogil further discloses the second portion having a liner mounted therein, the liner being a monolithic sheet of plastic stock, free of heat welded seams and made of clear plastic the second portion having reflective inner walls visible through the liner (Col 9, lines 10-25).

Mogil discloses all the limitations of the claims except for the first portion further having a substantially rigid, non-collapsible reinforcement member to maintain it in a condition to receive objects in the first enclosed space, the reinforcement member being a receptacle, being substantially the same size and shape of the first portion, defining a chamber within which to receive objects, the reinforcement member being waterproof and operable to contain liquids, the reinforcement member further having a mating divider to partition the first enclosed space into upper and lower and side accommodations, further the receptacle having a horizontal shoulder, and a divider locatable upon the shoulder alternatively the receptacle being a molded plastic bucket. Preston discloses a cooler (Fig 1) having a substantially rigid reinforcement member (10, 12, 14) which is a waterproof plastic receptacle, being a molded plastic bucket (insofar as applicant sets forth the structure to a bucket, the molded plastic pieces of Preston meet the limitations of the claim) operable to contain liquids and objects, having a mating divider (32) and a horizontal shoulder (the top of 12 and 14, insofar as applicants claims set forth the structure of a horizontal shoulder), the divider and

shoulder working together to partition the first enclosed space into side by side (as in 10, via 34) and upper and lower (12 vs 14 vs 10) regions, in order to keep separate different items stored in the cooler. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the assembly of Mogil with the reinforcement member and dividers of Preston in order to create separate regions for different items stored within the cooler. With regards to the first portion being non-collapsible, it is so after the rigid reinforcement member of Preston is inserted therein.

5. Claims 1-11, 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (US 6,234,677) in view of Melk (US 5,403,095). Mogil discloses a soft sided insulated container (Fig 19) having a first portion (504) and a second portion (506) defining first and second enclosed spaces respectively, the second portion being movable between a first folded position (See Fig 20) and a second unfolded position (See Fig 19), the second portion having at least one releasable securement (534) for maintaining it in the first position, the container having a first closure member to close the first enclosed space, and a second closure member to control access to the second enclosed space (note zippers), the first and second portions being insulated from each other to permit different environmental conditions to be maintained in the two enclosed spaces, the container further having a third portion mounted thereto defining a third enclosed space (526) wherein an entertainment device is mounted in the third position (the pen in Figure 15) wherein the assembly has an access port (opening to

third portion) capable of accommodating an electrical connection to the entertainment device.

Mogil further discloses the second portion having a liner mounted therein, the liner being a monolithic sheet of plastic stock, free of heat welded seams and made of clear plastic the second portion having reflective inner walls visible through the liner (Col 9, lines 10-25).

Mogil discloses all the limitations of the claims except for the first portion further having a substantially rigid reinforcement member to maintain it in a condition to receive objects in the first enclosed space, the reinforcement member being a receptacle, being substantially the same size and shape of the first portion, the non-collapsible receptacle being capable of holding liquids, and further being a molded plastic bucket. Melk discloses a cooler (Fig 1) having a non-collapsible molded plastic bucket (insofar as applicants claims define the term bucket) held inside (Fig 2, 20) in order to form a rigid waterproof liner, improving thermal characteristics and providing structural support for the container (Abstract), the reinforcement member being substantially the same size and shape as the compartment it is within as well as giving the first portion a non-collapsible rigid form. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the assembly of Mogil with the non-collapsible molded plastic bucket of Melk in order to create a rigid waterproof liner, improving thermal characteristics and providing structural support. With regards to the first portion being non-collapsible, it is so after the rigid reinforcement member of Melk is inserted therein.



6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (US 6,234,677) in view of Melk (US 5,403,095) as applied to claim 1 above and further in view of Beales (US 5,020,921). Mogil as modified above discloses all the limitations of the claim except for the reinforcement member having a folding divider for subdividing the first enclosed space. Beales discloses a foldable divider for supporting and separating items in an enclosed space (Fig 4). It would have been obvious to use the folding divider of Beales in conjunction with the reinforcement member of Mogil as modified above in order to provide support and separation for the items held within the reinforcement member.

7. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (US 6,234,677) in view of Preston (US 5,501,338) as applied to claim 2 above and further in view of Arreazola (US 2003/0139169), Sloan (US 6,305,185), Rucker (US 6,216,488) and Ellison (US 5,979,175). Insofar as Mogil does not disclose the entertainment device requiring a power source, Arreazola, Sloan, Rucker and Ellison disclose the combination of a radio with a cooler. In light of the teachings of Arreazola, Sloan, Rucker and Ellison, it would have been obvious to one of ordinary skill in the art at the time of invention to insert a standard radio in the third portion of Mogil, and to then provide it power in order to make it operable, as this would allow music to more easily be brought to where the cooler was being used.

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil (US 6,234,677) in view of Melk (US 5,403,095) as applied to claim 2 above and further in view of Arreazola (US 2003/0139169), Sloan (US 6,305,185), Rucker (US 6,216,488) and Ellison (US 5,979,175). Insofar as Mogil does not disclose the entertainment device requiring a power source, Arreazola, Sloan, Rucker and Ellison disclose the combination of a radio with a cooler. In light of the teachings of Arreazola, Sloan, Rucker and Ellison, it would have been obvious to one of ordinary skill in the art at the time of invention to insert a standard radio in the third portion of Mogil, and to then provide it power in order to make it operable, as this would allow music to more easily be brought to where the cooler was being used.

### ***Response to Arguments***

9. Applicant's arguments filed July 1, 2009 have been fully considered but they are not persuasive.

10. Applicant argues that the rigid liner being added to the Mogil reference would destroy said reference. Examiner finds this unpersuasive. Mogil discloses the ability to collapse the two portions separately as desired. Putting a rigid liner in one portion would gain the benefit of a rigid liner (better protection of contents) but still allow collapsibility of one section. Moreover, with regards to applicant's amendment that the claimed first portion is non-collapsible, it appears to be so merely due to the presence of the rigid liner, being made of the same soft-sided material as the second portion. As such, applicant's arguments are unpersuasive.

### ***Conclusion***

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan  
Examiner  
Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782